

RIGHTS AND DUTIES OF A GUARDIAN OF THE PERSON

1. The guardian is responsible for providing for the basic and any special needs of the child, including food, clothing, shelter, medical care, and education.
2. The guardian must notify the court in writing of any address change of the child, and must obtain permission of the court to move the child to a residence in another state or country.
3. The guardian may consent to and require medical treatment for the child.
4. The guardian is responsible for enrolling and maintaining the child in an appropriate education program.
5. The parent remains obligated to financially support the child. The guardian may take legal action to obtain child support for the child. The child may be eligible for AFDC, Social Security benefits, Veterans Administration benefits, Indian Child benefits, or other public or private funds.
6. The guardian has the authority to consent to the child's application for a driver's license. If the child then obtains a license and is involved in an accident, the guardian may be held liable.
7. The guardian is required to properly manage any funds received on behalf of the child, and to protect any property or assets of the child.
8. The court may set other conditions on the guardianship and order additional duties and responsibilities.

PROBATE GUARDIANSHIP PAMPHLET

(FOR GUARDIANSHIPS OF CHILDREN)

*This pamphlet provides basic
information only. If you need
additional information you may wish
to consult an attorney.*

*Local Rules and Procedures
differ from county to county.*

*Check page 8 of this pamphlet for
special instructions or consult the
county or court clerk's office
regarding special practices or rules
in your county.*

WHAT IS A LEGAL GUARDIAN?

A legal guardian is an adult to whom the court has given authority and responsibility for providing care of a child or care of a child's assets, or both. A guardian need not be a relative of the child.

GUARDIAN OF THE PERSON

The court may appoint a guardian of the *person* of the child when there is no parent able or available to meet the needs of the child because of the parent's death, incapacity, abandonment, military obligations, or other reasons. This pamphlet deals primarily with this type of guardianship.

GUARDIAN OF THE ESTATE

Generally, parents do not need a guardianship to care for a child's estate, if it is under \$5,000. If the money is not needed for the child's support, simpler court procedures are available to have the money placed in a bank account until the child is 18.

If the child has an estate valued at more than \$5,000 it may be necessary to appoint a parent or other person to serve as guardian of the estate. The guardian of the estate is required to keep the child's estate separate from the guardian's assets. In order to protect the child's estate, the court may require the guardian to:

- A) provide a cash bond of an amount specified by the court representing a percentage of the estate; or
- B) deposit cash assets into a blocked account from which funds may be withdrawn only on court order; or
- C) provide regular accountings to the court; or
- D) all or a combination of the above.

LETTERS OF GUARDIANSHIP

Once the court signs the order, the guardian must take the order to the clerk's office where Letters of Guardianship will be issued. The Letters of Guardianship is a document certified by the clerk as proof that the guardian has been appointed and is serving in that capacity as of the date of certification.

EFFECT OF THE GUARDIANSHIP

Under a guardianship of the person, the full physical and legal custody of the child is awarded to the guardian. The parents may no longer make decisions for the child.

It may be in the best interests of the child to maintain visitation and contact with the parents and other relatives. The court may order the guardian to accommodate reasonable requests for visitation and contact.

TERMINATION OF THE GUARDIANSHIP

The guardian, the child, a parent, or other interested party may petition the court to end the guardianship. The person seeking to terminate the guardianship must prove to the court that it is no longer necessary for the protection of the child or the child's interest. A guardianship of the person automatically ends when the child is adopted, is married, is emancipated by order of the court, or becomes 18 years old.

TO CHANGE GUARDIANS

The guardian, the child, if 12 years or older, a parent, or other interested party may petition the court to have the guardian removed. The court will consider the performance of the guardian and the best interests of the child. If the petition is granted, the court will appoint a successor guardian.

THE COURT INVESTIGATION

The local rules and procedures of many counties require guardianship petitions to be investigated, and the investigator prepares a confidential report that includes a recommendation on whether or not the guardianship should be established. The court may waive this procedure.

The investigation usually includes private interviews with the child and the proposed guardian, as well as a screening of the background and history of the proposed guardian including a check of records for reports of child abuse or neglect, or criminal convictions.

HEARING ON THE PETITION

Before or at the hearing the court may appoint an attorney to represent the child, particularly if the petition is contested (not agreed to) by the child, a parent, or other interested party. In order to establish the guardianship the court must conclude:

1. that an award of custody to a non-parent is necessary to serve the best interests of the child;
2. if a parent does not consent, that an award of custody to a parent would be detrimental to the child; and
3. that the proposed guardian is suitable.

If the court makes these findings the court will sign an order appointing a Guardian of the Person of the Child.

DOES THE CHILD NEED A GUARDIAN OF THE PERSON?

An adult may provide care for a child without a guardianship if that person has the permission of one or both of the parents.

If the parent has signed the proper documents giving a relative the right to authorize medical treatment for the child, the relative may do so without the need for a guardianship. In addition, the relative may enroll the child in school.

Although a nonrelative caring for a child may complete proper documents to enroll the child in school and consent to school-related medical care, unless the nonrelative caretaker has a written power of attorney from one or both parents, that person will require appointment as a guardian to be able to authorize medical treatment.

You may wish to become a child's guardian if you believe the child is in need of protection and if you are sure that the child's needs will be met if allowed to remain in your physical custody. You may be able to add the child to your health plan if you are named the child's guardian.

HOW TO BECOME A LEGAL GUARDIAN

A guardianship is established only after legal documents are filed, a necessary investigation is conducted, and the court appoints a guardian.

You may wish to retain an attorney or seek the assistance of Legal Aid offices or legal clinics in your community that provide services, or you may file the documents and proceed on your own. There are published guides to the procedures available in bookstores and the local law library.

If the parent or parents do not consent to the establishment of the guardianship, the assistance of an attorney may be important.

HOW TO BEGIN

Most of the documents you need to file are standard forms used throughout the state. Some counties require the use of local forms in addition to the state forms.

Petitions for the appointment of a guardian are usually filed in the clerk's office in the county in which the child is residing. The clerk cannot give legal advice or assist in completing the forms, but the staff members can provide information about procedures.

YOU MUST FOLLOW STATE AND LOCAL REQUIREMENTS AND PROCEDURES.

WHO CAN FILE A PETITION?

Any interested party, or the child, if 12 years or older, may file the petition for appointment of a guardian.

WHAT ARE THE COSTS?

There is a fee for filing the petition. In addition, you may be charged a fee for a guardianship investigation. If neither you nor the child's estate can afford to pay, you may request the court to waive the fee requirement. The clerk can provide the form for a request for the waiver.

WHAT HAPPENS AFTER THE PETITION IS FILED?

1. The law requires that you must properly notify parents, certain relatives of the child, the child 12 years or older, and others of the petition at least 15 days before the hearing set by the court.
2. You may request that the court issue an order that certain persons need not be notified. The court will issue this order only for good cause.
3. Unless the court dispenses with notice requirements, you will have to prove to the court that you used "due diligence" to try to locate and notify any person whom you did not notify.
4. The court has the power to establish a temporary guardianship until the hearing is conducted. You must request this on special forms to be filed with the petition, and you must show that the child's welfare requires this protection. Although the period of the temporary guardianship is usually 30 days or until the hearing date, it may be extended if the hearing is continued after the originally scheduled date.
5. If the parents, a child 12 years or older, and other persons entitled to be notified, all consent to the guardianship, the court may grant the petition and appoint a guardian without an investigation or additional hearing. If the parents do not consent to the guardianship, or the required waiver of notice and consent forms are not signed and filed, a hearing on the petition will be held.

YOU MUST FOLLOW STATE AND LOCAL REQUIREMENTS AND PROCEDURES.